IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.516 of 2000

J.Ponraj ... Appellant/Complainant

vs.

Rajanbabu .. Respondent/Accused

This appeal is filed under section 378 (4) r/w Section 383 CrlPC against the Judgment dated 18.01.2000, in C.C.No.9700/1998 on the file of the Court of V Metropolitan Magistrate, Chennai.

For Appellant : Mr.P.Sankarappan

For Respondent : Mr.S.Anantha Narayanan

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.9700 of 1998 on the file of the Court of V Metropolitan Magistrate, Chennai. The appellant is the complainant. A private complaint was preferred by the complainant under Section 200 Cr.P.C for an offence under Section 380 IPC for the alleged theft of plaque in C.S.I.Church, committed by the accused.

2) The short facts of the private complaint preferred by the complainant are as follows:

A C.S.I.Church was constructed at No.1, Jaganathan Salai, Periyar Nagar, Madras-82 in the land allotted by the Government free of cost. The foundation stone for the church under construction was laid on 11.10.1987 by the then Bishop of Madras Diocese, Rt.Rev. Sundar Clark. The plaque contains the following words:

" தென்னிந்திய திருச்சபை பெரியார் நகர் சென்னை–82
ஆண்டவரின் நாமம் மகிமை பட இவ்வாலய அடிக்கல் ஞாயிறு
11.10.87 அன்று மகாகனம் அருட்பெரு திரு சுந்தர் கிளார்க்
அவர்களால் நாட்டப்பட்டது"

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with ulterior motive, Mr.Frank Moses of Vepery, filed a suit, styling himself to be the President of Periyar Nagar, Christian Association and obtained a stay. Taking advantage of the exparte order of ad-interim injunction, Mr.Frank Moses and his man did not allow 52 CSI families to enter into the church and worship. A Division Bench of this Court passed an order on 22.12.1994 permitting CSI group to have their prayers in the church under the leadership of their paster. So, CSI families are worshipping in the church along with their presbyters. It was brought to the light through the watchman of the church that the plaque laid by the then Bishop of Madras Diocese was missing from the place, where it was laid. On an enquiry, it was brought to the notice that the said plaque was stolen by Mr.S.Rajan Babu, under Secretary, P.W.D.Department, Tamilnadu Secretariat. Hence the complaint.

3) Since the police have refused to register a case on the complaint preferred by the complainant, they approached this Court. This Court in its order in Crl.O.P.No.12904 of 1997 directed the third respondent Inspector of Police, Rajamangalam Police Station, Kolathur, Madras to register a case and take up investigation. The police, thereafter, registered a case, but after investigation referred the same as 'mistake of fact'. Again, the complainant approached the trial Court by way of private complaint. After recording the sworn statement, the private complaint was taken on file by the learned Judicial Magistrate in C.C.No.9700 of 1998 under Section 380 IPC. When the accused appeared on summon before the learned Judicial Magistrate, copies under Section 207 Cr.P.C. were furnished to the accused, when the offence levelled against him was explained to him and questioned he pleaded not guilty.

4) On the side of the complainant, P.Ws 1 to 6 were examined. Exs P1 and P2 were marked. P.W.1,the Secretary of CSI Church, Periyar Nagar would depose that Ex P1 is the document to show that the accused Rajanbabu is a member of the Advisory Committee in CSI Church and that the Government have allotted 7 ½ grounds for constructing a church at Periyar Nagar and the said land was purchased by an unregistered Christian Association and later was handed over to CSI church in the year 1983 and in the year 1984, CSI church was functioning in a thatched shed under the supervision of Madras Diocese and an Advisory Committee was also appointed to manage the affairs of the church. A committee was constituted with six members to administer the accounts of the church and the accused is one of the members of the said committee. On 11.10.1987, Bishop Sundar Clark had laid foundation stone for the construction of CSI Church. M.O.1 series are the photographs taken in the said laying of foundation stone function. P.W.1 claims that he was a

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Treasurer of the new committee constituted after the dissolution of the earlier Advisory Committee. Ex P2 is the document dated 4.12.1991 to show that P.W1 was appointed as a Treasurer of the said Advisory Committee. Since the earlier committee has not submitted the accounts properly, P.W.1 has filed a civil suit against the accused and his associates. After filing the suit, the accused along with his associates had closed the church. After getting an order of injunction by filing the suit, the accused and his associates removed the foundation stone laid by Bishop Sundar Clark. The theft of the plaque came to light only in the year 1994, when P.W.1 entered into the church, after getting an order for vacating the stay. The watchman and his wife informed P.W,2 that one day at about 7.30p.m., the accused had removed the foundation stone and on the basis of the information passed on by the watchman and his wife , a criminal complaint has been preferred by P.W1. on 8.1.1995 with the police. Since the police have not taken any action ,P.W.1 has moved the High Court and obtained orders directing the police to take necessary action. The police after registering the case, they referred the same as "mistake of fact". Hence the private complaint.

4b) P.W.2 Thiru Devaraj would depose that a land was allotted by the Government to the people of Christianity in the year 1983 and that he along with the accused and one Navamani, Rajasekaran formed a committee for the purpose of constructing a church in the said land and when the committee approached the Bishop for the purpose of constructing a church in the said land, the Bishop had donated Rs.20,00,000/- and from the public, they have collected Rs.5,00,000/- by way of contribution and at that time Navamani was the Treasurer and the said Committee met the Bishop and a foundation stone was laid by Bishop Sundar Clark on 11.10.1987 at about 11.30 a.m., in the presence of the members of the Committee and public. The accused was also present at that time and subsequently a church was constructed in the said place. When the Bishop asked the committee to submit the accounts, Rajanbabu, Rajasekaran and Navamani had refused to submit the accounts and that they have filed a suit to get an order of injunction restraining him(PW2) from entering into the church because of that order of injunction, he could not enter into the church till 1994 and after getting an order from the High Court for vacating the stay order, he entered into the church in the year 1994. Only at that time, he found the plaque laid by Bishop Sundar Clark on 11.10.1987 had been missed and when he enquired with Selvaraj, he informed him that he only removed the plaque and retorted that he is not afraid of any complaint preferred against him. When the matter was taken to the police, the police refused to interfere on the ground that civil case is pending in the Civil Court and subsequently P.W.1 has preferred the private complaint.

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4c) P.W.3 is one Anbu is a member of the Committee of CSI Church ,Periyar Nagar. According to him, he became the member of the church in the year 1984 and that the members are the accused Rajanbabu, Ponnuvel, Rajasekaran and Navamani and that foundation stone was laid by Bishop Sundar Clark on 11.10.1987, while he was the member of the committee of the said CSI church and that about 5000 people gathered at the laying of foundation stone function which held on 11.10.1987 at 11.30 a.m., and after getting a plan approved, they have constructed the church in the said place allotted by the Government to this church. Only during December 1994, when he entered into the church, after the removal of the order of stay, he found the plaque missing and that they preferred a complaint with the police, after Christmas. Since the police have not taken any action, they preferred this private complaint through P.W.1.

4d) P.W.4 Balan in his evidence would depose that the land was allotted by the Government in the year 1983 for the people of Christianity at Periyar Nagar for the purpose of constructing a church. The church was started in a thatched shed in the year 1984 with the help of CSI and collecting funds from the public, a foundation stone was laid on 11.10.1987 for the purpose of constructing the church and in the said function, the accused Rajanbabu was also participated and in the year 1991, there was a civil suit filed in connection with the malpractice in maintaining the accounts for the church and it was brought to light in the year 1994 that the foundation stone laid on 11.10.1987 by the Bishop Sundar Clark was found missing and Selvaraj, watchman informed that the accused had removed the said plaque. Hence the private complaint was preferred by P.W.1,since the police have failed to register the case on the basis of the complaint preferred by P.W.1.

4e) P.W.5 Selvaraj is the watchman of CSI Church at Periyar Nagar. He would depose that from 1984, he is working as a watchman in the said CSI church and in 1986 Bishop Sundar Clark had laid the foundation stone for the construction of CSI church at Periyar Nagar and the construction work of the church commenced in the year 1988 and the same was completed in the year 1996. Since the Committee has failed to submit the accounts for the construction of CSI Church, a civil suit has been filed and the church was closed and a group worshiped the deity from outside the church. He would depose that he does not know the date of laying of the foundation stone and that two years from the date of laying of the foundation stone, the accused had removed the plaque and 1 ½ years thereafter, the CSI group obtained a stay and entered into the church and during enquiry, he informed that the accused had removed the plaque.

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4f) P.W.6 is the wife of the watchman P.W.5. According to her, she is residing with her husband in a portion of CSI Church at Periyar Nagar. She would depose that one Saturday at about 7.30 p.m., the accused had removed the plaque.

5)When incriminating circumstances were put to the accused, he denied his complicity with the crime. After going through the evidence both oral and documentary, the learned trial Judge has come to a conclusion that there is an inordinate delay in preferring the complaint and ultimately held that the guilt against the accused has not been proved beyond any reasonable doubt and accordingly acquitted the accused under Section 255(1) Cr.P.C. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

6) Now the point for determination in this appeal is whether the offence under Section 380 IPC has been proved beyond any reasonable doubt against the accused to warrant conviction?

7)Heard Mr.P.Sankarappan, learned counsel appearing for the appellant and Mr.S.Anantha Narayanan, learned counsel appearing for the respondent and considered their rival submissions.

8)The point:-
This is a trivial case of theft of a plaque said to have been laid by the Bishop on 11.10.1987 for the purpose of constructing CSI Church at Periyar Nagar. According to the evidence of P.W.1, complainant, he came to know about the theft of the plaque only in the year 1994 through P.W.5, the watchman of the church. But the evidence of the watch man(P.W.5) is to the effect that he does not know the exact date on which the theft of plaque was committed. But he would say that the accused had removed the plaque. In the cross examination, P.W.5 has categorically admitted that he does not know the date, month and year of the occurrence.

9) Another eye witness,P.W.6 who is the wife of P.W.5, the watchman, would also corroborate the evidence of P.W.5 to the fact that she also does not know the date of occurrence. She deposed that one Saturday at about 7.30p.m., the plaque was removed by the accused.

10) According to P.W.1,when he entered into the church in the year 1994, after the stay against them was vacated by the High Court, he found that the foundation stone was missing. Even in his evidence he would admit that the police complaint was preferred only on 8.1.1995. As rightly pointed out by the learned trial Judge that even to show that a complaint was preferred with the police by P.W.1 on 8.1.1995, there was no document produced.

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Normally, when a criminal complaint is filed with the police, the police is bound to issue receipt of acknowledgment for having registered the FIR. At least, thereafter, immediately P.W.1 would have approached the Court with a private Complaint, but he has not chosen to do so. This complaint was preferred only in the year 1998. There is no explanation forthcoming from the complainant for this inordinate delay in preferring the complaint that too after a lapse of four years . An unexplained delay in preferring the complaint in my view is fatal to the case of the complainant.

11) Yet another point to be noted in this case is, according to P.W.2, the plaque was removed by P.w.5 Selvaraj. P.W2 has not stated that P.W.5 Selvaraj had informed him that the accused had removed the plaque from the place of occurrence. Under such circumstances, I do not find any illegality or infirmity in the findings of the learned trial Judge in acquitting the accused on the ground of inordinate delay in preferring the complaint which does not warrant any interference from this Court. Point is answered accordingly.

12. In fine, this appeal is dismissed confirming the Judgment in C.C.No 9700 of 1998 on the file of V Metropolitan Magistrate, Chennai.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The V Metropolitan Magistrate,
Chennai.

2. Do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.

+ 1 cc to Mr. R. Sankarappan, Advocate SR No. 12753

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KSJ(CO)
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